

January 1933

Supreme Court Decisions

Dicta Editorial Board

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Supreme Court Decisions, 10 Dicta 155 (1933).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Supreme Court Decisions

CRIMINAL LAW—RECEIPT OF DEPOSIT A CRIME—WHEN—*Cole et al. vs. The People*—No. 13174—Decided January 7, 1933—Opinion by Mr. Justice Butler.

I.

Defendants were convicted under the statute which makes it a crime for any officer, director or employee of a bank to receive or to assent to the reception of a deposit of money by the bank with the knowledge of the fact that the bank is insolvent.

II.

Objections to the conviction are:

(a) The contention that the act in question is void because it creates a new felony and that that subject is not mentioned in the title is untenable. "The word 'subject' as used in the constitution signifies the basis or principal object of the act. * * * Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and properly included in the law, and the law will not, by reason of such inclusion, be rendered unconstitutional as embracing more than one subject. * * * The penal provision in the act * * * is germane to the general subject expressed in the title."

(b) The contention that a new crime can be created only by amendment of the criminal code and that the act in question does not purport to amend the criminal code is without merit.

III.

The contention that the information is "too uncertain, inconsistent and repugnant to inform the defendants of the nature and cause of the accusation or to support a judgment" because the information charges two separate and distinct crimes,

1. Receiving a deposit with knowledge of the bank's insolvency;
2. Larceny,

is not sound. The allegation of larceny has no proper place in the information, but its insertion did not tend to prejudice the substantial rights of the defendants on the merits, and, therefore, is no ground for the reversal of the judgment.—*Judgment affirmed.*

CRIMINAL LAW — FRAUDULENTLY OBTAINING MONEY — CHECK CASHED OUT OF STATE — JURISDICTION — *Updike vs. People* — No. 12989 — Decided January 7, 1933 — *En banc* — Opinion by Mr. Chief Justice Adams.

1. In a prosecution for fraudulently obtaining "\$5,000.00 of the personal property, goods, chattels and monies" of complaining witness, proof was that the thing obtained was a check of said amount, mailed by witness in Colorado to defendant in Idaho and deposited there by

defendant as a cash item. Although the information made no specific reference to a check, there was no variance between allegation and proof.

2. The crime was committed where the check was fraudulently obtained, not where it was cashed for money or otherwise disposed of; and, for purposes of jurisdiction, deposit of the check in the mails was a delivery to defendant. Endorsement of the check by defendant in another state, and endorsement by successive banks, had no bearing on the question of jurisdiction or venue.

3. Courts of this state had jurisdiction to try the offense, even though the fraudulent representations were made from out of the state, the injury having been done here.

Mr. Justice Butler, with whom Mr. Justice Campbell and Mr. Justice Hilliard concurred, dissenting:

1. The crime of obtaining property by false pretenses is committed where the property is obtained by defendant. The money for the check was obtained by defendant out of this state. Consequently, the crime of obtaining money by false pretenses was not committed in Colorado and the trial court had no jurisdiction.

2. The court rejected evidence offered for the purpose of proving that defendant had deposited the check in his Idaho bank as a cash item, and not merely for collection. Such ruling was error, because that evidence showed that the check was collected by the bank as owner, not as agent for defendant, and that defendant had obtained the money in Idaho, not in Colorado.—*Judgment affirmed.*

DIVORCE—ALIMONY—MODIFICATION—*Neuhengen vs. Neuhengen*—No. 13216—*Decided January 16, 1933*—*Opinion by Mr. Justice Hilliard.*

1. At the time divorce decree was entered, husband and wife entered into a voluntary agreement with respect to payment of alimony, approved by the court, whereby husband was to pay \$50 per week for alimony and support of minor child. Thereafter at successive hearings the payments were reduced from time to time, the final reduction being to \$100 per month. Husband had remarried.

2. In exercising jurisdiction to modify a decree for payment of alimony, court should proceed with caution, and unless it clearly appears that the order of which modification is sought is no longer fair and just, the application should be denied.

3. Where the evidence shows that the husband was earning approximately \$300 per month, an order modifying payments of alimony and support of child to \$100 per month is unreasonable, and an order making such reduction should be set aside.—*Judgment reversed.*

WITNESSES—EXAMINATION OF ADVERSE PARTY UNDER STATUTE—WHERE PROPER—TRIAL OF ACTION DEFINED—EXAMINATION BEFORE NOTARY PUBLIC DISTINGUISHED—*May Taylor et al. vs. Frank N. Briggs et al.*—No. 12937—*Decided January 7, 1933*—*Opinion by Mr. Chief Justice Adams.*

1. Plaintiffs were adjudged guilty of contempt of court for their refusal to comply with an order of court to submit to cross-examination as adverse parties before a notary public in response to a subpoena duces tecum issued by the notary. Plaintiffs had objected to the procedure on the ground that Section 6570 of the Compiled Laws of 1921, authorizing cross-examination of an adverse party to a suit "upon the trial thereof" did not authorize such an examination before a notary public.

2. Section 6570, Compiled Laws of 1921, does not authorize compulsory cross-examination of an adverse party before a notary public.

3. The taking of a deposition before a notary public is not the trial of an action or proceeding referred to in Section 6570, Compiled Laws 1921.—*Judgment of contempt reversed, cause remanded with instructions.*

APPEAL AND ERROR—*Docketing case after expiration of year—Rogers vs. Pihlstrom—No. 13206—Decided January 23, 1933—Opinion by Mr. Justice Hilliard.*

1. Judgment was entered in the court below November 6, 1930. Case was docketed on error in the Supreme Court November 10, 1932.

2. Under rule 18 proceedings in error must be brought within one year after rendition of judgment in the court below.

3. Motion to dismiss writ of error held good.—*Proceedings dismissed.*

WATER RIGHTS—SELF-REGISTERING DEVICES—INSTALLATION COMPELLED WHEN—ORDERS OF STATE ENGINEER—NO. 12736—*Hinderlider et al. vs. Everett et al.—Decided January 23, 1933—Opinion by Mr. Justice Campbell.*

1. The statute of 1929 providing that water users, upon orders of the State Engineer, shall install self-registering automatic gage height recording instruments, and maintain them at their own expense, and which also provides for appeals from the orders of the Engineer to the District Court, is constitutional and expressly provides for due process of law.—*Judgment of the District Court reversed.*

CARRIERS—BY MOTOR VEHICLE—PRIVATE CARRIER WHEN—CONSTRUCTION OF ACT—No. 13108—*Bushnell v. The People—Decided January 30, 1933—Opinion by Mr. Justice Moore.*

1. The statute of 1931 regulating public and private motor carriers, distinguishing between them, providing for fees and taxes and classifying the types of private carriers is held constitutional.

2. The statute defines a Class A Private Carrier as one which operates over "substantially regular or established routes or between substantially fixed termini." It is contended that this provision makes a common carrier out of a private carrier through legislative fiat. The contention is unsound. The act provides, "nor shall anything herein contained be construed or applied so as to compel a private carrier by motor vehicle to be or become a common carrier." Other acts which

have been held unconstitutional have excepted some type or types of business from compliance, and were thereby discriminatory. This is not the case with the Colorado act. "The various classifications so made are reasonable and not arbitrary. If these acts be so administered as to deny any motor vehicle operator his rights under the law, the courts are always open to redress such wrongs."—*Judgment affirmed.*

Ludlow v. The People—No. 13140—*Kimble v. The People*—No. 13141—*McDill v. The People*—No. 13159.

These above cases are companions to the Bushnell case, all involving the same point. The McDill case was based upon a different set of facts, thereby distinguishing it. The application of the law is, however, the same.

N. B.: These opinions were all handed down by Mr. Justice Moore, all decided Jan. 30, 1933.

INSURANCE—ACCIDENT POLICY—OCCUPATIONAL USE OF EXPLOSIVES—DENIAL OF LIABILITY—*Loyal Protective Insurance Co. v. Huffington*—No. 13229—*Decided January 30, 1933—Opinion by Mr. Justice Burke.*

1. An accident policy provided that no payment should be made to insured for injury while engaged in the "occupational use of explosives." Insured, a farmer, usually removed rocks from his fields by hauling, but on rare occasions was compelled to resort to blasting. While so engaged, he was injured by a dynamite charge. Such use of explosives was held not to be occupational, but was occasional and incidental, and pertained to another occupation for which recovery was authorized by the policy.

2. Denial of liability by an insurer, on a ground other than want of notice, proof of loss, or premature suit, waives the right to insist upon such requirements.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—LIABILITY OF CITY FOR INJURIES—*City of Pueblo vs. Sinclair*—No. 12879—*Decided February 14, 1933—Decided by Mr. Justice Campbell.*

Mrs. Sinclair sued the City of Pueblo to recover a judgment for injuries she sustained in falling into a hole in one of the public streets. The jury's verdict in her favor for \$2150 was upheld by the trial Court and judgment entered against the city.

1. The evidence does not show any prejudice on the part of the jury or that the verdict was excessive or the result of bias or prejudice.

2. The instructions of the Court to the jury were evidently fair.

3. Upon the question of notice to the city of the alleged unsafe and dangerous condition of the street prior to the accident, there was evidence tending to show that the hole had been there for a number of weeks before the accident occurred. It was proper to submit this question to the jury on the question of opportunity to remedy the same.—*Judgment affirmed.*

HOFF-SCHROEDER'S

Luncheon That Satisfies—25c, 30c, 35c and Up

Our 50c Dinner will delight you. Regular cafeteria and cafe service, also. Our Soda Fountain Luncheonette for tasty specials. Watch our window signs for after-theater suggestions.

Hoff-Schroeder's For All Food Wants!

Telephone MAin 5523

The *M* **McCarty-Johnson**
Heating and
Engineering Co.
Contractors

Heating, Ventilating and Power
Installations

Power Pipe Work - Asbestos Work
REPAIRS AND SUPPLIES

1440 Curtis St., Denver, Colo.

P. R. Johnson

C. M. Murray

Denver Garage

1437 California St.—MAin 9594

STORAGE

\$5 Per Month and Up or
All Day Parking 25c

Collins, Witting & Company

CERTIFIED PUBLIC ACCOUNTANTS

Established 1912

Audits - Systems - Tax Service

1019 University Bldg. MAin 0818

Louis G. Carpenter Engineering

Legal Investigations—Examinations

Court Work—Reports

1455 Gilpin

YOrk 4676

COPPER CAB CO. - - TAbor 3361

FROM YOUR LAW OFFICE or Downtown
Section TO THE NEW COURT HOUSE
BUILDING or West Side Court

10c

QUICK SERVICE - - A Trial Will Convince You



Flowers and Decorations

Flowers Anywhere by Wire Service

*Distinction
Dependability*

823 17th Street

TAbor 5521

Denver National Building

Rollandet and Stratton

*Patent Trade-Mark and Copyright
Attorneys*

Suite 1117 Security Bldg.
MAin 5295



*We Spe-
cialize in*
BRIEFS and
ABSTRACTS

Clark Quick-Printing Co.
1332-34 Lawrence St. KEystone 4920
DENVER

LOW COST AUTOMATIC HEAT

Let us show you without
obligation on your part.

Moffat Coal Company

MAin 0235

COLORADO REPORTS
Volumes 86, 87, 88, 89 and 90
Volume 91 Ready March 15th,
1933
(Back Numbers Can Usually Be
Supplied)

**Decisions of the
Public Utilities Commission
of Colorado**

Volumes VI, VII and VIII, Jan. 1,
1920, to Dec. 31, 1930. 10 Years of
Public Utilities Decisions at your
fingertips. Price \$7.50 each volume.

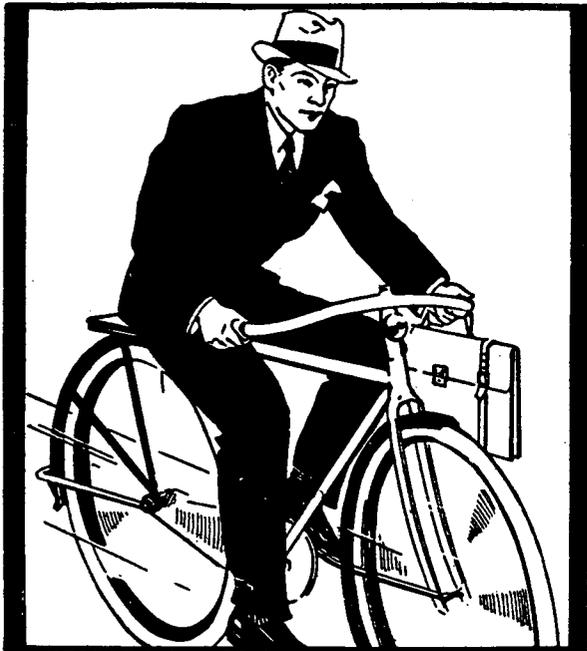
The Bradford-Robinson Printing Co.

1824-38 Stout Street

Denver, Colorado

Phone KEystone 0111 For That Rush Requirement

You Don't Do Business on a Bicycle



You *could* make your business calls on a bicycle, but you don't because you place a proper value on time and convenience.

Your wife *could* cook on an antiquated stove, and get along with out-of-date appliances, but she is too good a judge of the true value of time, beauty, health and convenience to sacrifice them needlessly.

Go with her sometime and see the striking improvements that have been made in the modern gas ranges, electric refrigerators, miscellaneous household appliances and radios.

You will both be well repaid.

Public Service Company of Colorado

TRUST BANKING

for

Corporations and Individuals



Services to Corporations

Trustee under Corporate Mortgages . . .
Depository for Protective Committees . . .
Transfer Agent and Registrar for Corporate
Stocks . . . Miscellaneous Fiscal Agencies.

‘ ‘ ‘

Services to Individuals and Families

Executor and Administrator of Estates . . .
Trustee under Wills . . . Trustee of Living
Trusts and Life Insurance Trusts . . . Safe-
keeping of Securities.

‘ ‘ ‘

Escrows

‘ ‘ ‘

**BUSINESS SERVICE FOR BUSINESS MEN
AND WOMEN AND THEIR COUNSEL.**

‘ ‘ ‘

**THE AMERICAN NATIONAL BANK
THE DENVER NATIONAL BANK
THE COLORADO NATIONAL BANK
THE INTERNATIONAL TRUST COMPANY
THE UNITED STATES NATIONAL BANK**